

**BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM**

EXECUTIVE SUMMARY FOR ACTION ON RULE INITIATION

Agenda # II.C.3.

Agenda Item Summary: The proposed amendments would allow the Department to initiate a system of registration for certain air contaminant sources. Sources would initially include non-metallic mineral processing plants (which include sand and gravel crushers and screens).

List of Affected Rules: Amendments are proposed to ARM 17.8.504, ARM 17.8.505, and 17.8.744. The proposed new rules would be codified as a new subchapter in ARM Title 17, chapter 8.

Affected Parties Summary: The proposed amendments would affect specific regulated facilities, (which include sand and gravel crushers and screens), which are currently required to obtain permits prior to construction or operation, that would qualify for registration in lieu of permits.

Scope of Proposed Proceeding: The Department is proposing that the Board initiate rulemaking and conduct a public hearing to consider the proposed amendments to ARM Title 17, Chapter 8, and to take testimony on inclusion of the rule changes in the State Implementation Plan (SIP) and accept comments on the draft environmental assessment for this rulemaking.

Background: The new rules would implement a registration system for certain facilities that presently require an air quality permit. Currently the administrative rules adopted under the Clean Air Act of Montana require regulated facilities to obtain a permit prior to construction or operation. House Bill 700, passed by the 2003 Montana legislature and codified as 75-2-234, MCA, allows the Board to adopt a registration system in lieu of permitting.

The proposed new rules would allow some facilities, which now require an air quality permit to operate, to register with the Department in lieu of submitting a permit application. Registered facilities would still be required to supply information that is consistent with the type and amount of information currently required in a permit application and to follow rules of operation that are similar to current permit conditions. These rules of operation would include emission limitations and requirements for testing, monitoring and reporting.

The proposed new rules would initially apply to non-metallic mineral processing operations. Registration for such operations would be limited to those operating within areas for which a current mined land reclamation permit had been issued, and an environmental assessment had been completed.

The development of a registration process for homogenous facilities where permit conditions and environmental impact vary little from permit to permit would allow the Department to use air program staff more efficiently, focusing on major source permitting issues and field compliance activities.

The registration process would not include a public comment period or appeal process for each individual facility as is currently provided under the permitting system. However, there would be a public comment period on the rulemaking that establishes the registration process as well as on the programmatic

environmental assessment applying to the proposed new rules.

New Rules I through VI provide facility registration general information, including definitions, applicability, facilities eligible for registration, a description of the registration process and information that must be provided, and a cross-reference to ARM 17.8.504 for the registration fee.

New Rules VII through XIII contain the proposed registration requirements for non-metallic mineral processing plants. The proposed rules include definitions; registration information; facility-wide applicable requirements, including general requirements, operating requirements, emission limitations, testing, monitoring, and record keeping; applicable requirements for electrical generators; and additional requirements for facilities locating in a PM-10 non-attainment area.

The rulemaking would amend ARM 17.8.504 and 17.8.505 to reference the fees for registered facilities, and amend 17.8.744 to exclude registered facilities from the requirement to obtain Montana Air Quality Permits.

Hearing Information: The Department recommends that the Board appoint a presiding officer and conduct a public hearing to take comment on the proposed amendments, and inclusion of the proposed amendments in the SIP, and to take comment on the draft environmental assessment. EPA regulations require a public hearing to take comment on adoption of revisions to the SIP. These amendments would be submitted to EPA as a SIP revision.

Board Options: The Board may:

1. Initiate rulemaking and issue the attached Notice of Public Hearing on Proposed Amendment and Adoption and Draft Programmatic Environmental Assessment;
2. Modify the Notice and/or the draft Environmental Assessment and initiate rulemaking; or
3. Determine that amendment and adoption of the rules is not necessary and deny the Department's request to initiate rulemaking.

DEQ Recommendation: The Department recommends that the Board initiate rulemaking and appoint a presiding officer to conduct a public hearing, as described in the enclosed proposed Montana Administrative Register notice.

ENCLOSURE: The following information is attached to this summary:

1. Notice of Public Hearing on Proposed Amendment and Adoption;
2. Draft Programmatic Environmental Assessment.